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Legal Implications of Recent Governmental Actions
In Poland

Domestic Law

The extension of PL-480 food program benefits to a country requires a determination that the country is not controlled by a "foreign government or organization controlling the world communist movement." Poland is currently eligible for benefits under PL-480, but the provision of such benefits has been suspended pending the outcome of the Administration's review of the Polish situation. The relevant language in PL-480, quoted above, would provide a legal basis for revoking Poland's current eligibility for PL-480 benefits, should the President decide to do so.

Relevant provisions in the Trade Act of 1974 would also provide a legal basis for the President to determine that Poland was no longer eligible for MFN treatment as a result of recent GOP actions. In particular, Section 402 of the Trade Act renders any nonmarket economy country as to which the President determines that such country is restricting the freedom to emigrate ineligible for MFN treatment or participation in any USG program in which the US extends credits or credit guarantees or investment guarantees, directly or indirectly, and prohibits the President from concluding any commercial agreement with such country. Restrictions recently imposed on travel by Polish citizens out of Poland under the martial-law regime could provide a basis for such a determination.

Various provisions of the Immigration and Nationality Act of 1952 relating in particular to deferred voluntary departure, refugee status, and granting of asylum may be brought into play by events growing out of recent GOP actions. The Legal Adviser's Office is currently exploring such matters in more detail.

The events of this week also cast serious doubt on the possible eligibility of Poland for any of the forms of assistance provided under the Foreign Assistance Act, such as Economic Support Fund Assistance under Chapter 4 of Part II, which may be provided to promote the "economic or political stability" of the recipient. Section 620(f) of the Act provides that:

No assistance shall be furnished under this Act ... to any communist country. This restriction may not be waived pursuant to any authority contained in this Act unless the President finds and promptly reports to Congress that: (1) such assistance is vital to the security of the United States; (2) the

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recipient country is not controlled by the international communist conspiracy; and (3) such assistance will further promote the independence of the recipient country from international communism ...

(Poland is specifically named in this Section as a "Communist country" to which this prohibition applies.) Whether or not the President would, under present circumstances, be prepared to find that assistance would be vital to U.S. security and would promote Polish independence, recent events would make it much more difficult to conclude that the Polish government is presently not effectively controlled by the Soviet Union.

International Law

The actions of the Government of Poland under its decree of martial law might be inconsistent with the Universal Declaration of Human Rights (the Declaration) adopted and proclaimed by the United Nations in General Assembly Resolution 217A(III) of December 10, 1948, the International Covenant on Civil and Political Rights that entered into force on March 30, 1976 and was ratified by Poland on March 18, 1977, and the International Covenant on Economic, Social and Cultural Rights that entered into force on January 3, 1976 and was ratified by Poland March 18, 1977.

While the International Covenant on Civil and Political Rights in Article 4 provides that a Party State "may take measures derogating from [its] obligations under the present Covenant, it may do so only "[i]n times of public emergency which threatens the life of the nation." Further, such derogations may only be taken "to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law" Certain provisions of the Convention, under Article 4, may not be derogated from in any case. These include Article 6 ("...No one shall be arbitrarily deprived of his life") and Article 7 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment..."). Reports of actions by the Polish Army may suggest that members of Solidarity, as well as other Polish citizens may have had these rights violated.

To the extent that the measures taken by the GOP are not "strictly required by the exigencies of the situation," other provisions of the Covenant on Civil and Political Rights [CCPR] as well as the International Covenant on Economic, Social and Cultural Rights [CESCR] and the Universal Declaration of Human Rights may be violated. These include: (1) "the right to

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life, liberty, security of person, freedom from arbitrary arrest and detention (Articles 3 and 9 of the Declaration and Articles 6 and 9 of the CCPR) by acts of arbitrary detention on the basis of the ambiguous standard of "well-founded suspicion."

2) The right to freedom of movement and residence with the borders of each state and the right to leave one's own country by acts requiring permission to change residences, prohibiting freedom to leave Poland, and prohibiting the use of watercraft (Articles 13 of the Declaration and Article 12 of the CCPR).

3) The right of freedom of opinion and expression, including the right to receive and import information and ideas through any media and the right to freedom from interference in one's correspondence (Article 19 of the Declaration and Articles 17 and 19 of the CCPR).

4) The right to freedom of peaceful assembly (Article 20 of the Declaration and Articles 21 and 22 of the CCPR).

5) The right to form and join trade unions for the protection of economic and social interests (Article 23 (4) of the Declaration, Article 22 of the CCPR; and Article 8 of the CESCR). The International Covenant on Economic, Social and Cultural Rights states that this right may be restricted only to the extent prescribed by law and which [is] necessary in a democratic society in the interest of national security or public order...." The Convention states explicitly that a Party State has an obligation to ensure the right of trade unions to establish national federations. It states further that there is to be no restriction on those obligations assumed under the International Labour Organization Convention of 1949 to which Poland is a party.

The Final Act of the Conference on Security and Cooperation in Europe, while not a legally binding international agreement, is considered to possess significant political and moral force as a statement of the intentions of the parties. Actions taken by the GOP since the imposition of martial law on December 12 - in particular, arrests of and prosecutions under summary procedures against individuals because of the exercise of their right to speak freely and to organize into labor unions in order to bargain collectively and engage in strikes - appear inconsistent with the commitments made by Poland as a Final Act signatory to "promote and encourage the effective exercise of civil, political, economic ... and other rights and freedoms

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all of which derive from the inherent dignity of the human person," and the reaffirmation to "act in conformity with the purposes and principles of the charter of the United Nations and with the Universal Declaration of Human Rights" also contained in the Final Act.

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